

JON D. MEER (State Bar No. 144389)
jmeer@seyfarth.com
SIMON L. YANG (State Bar No. 260286)
syang@seyfarth.com
SEYFARTH SHAW LLP
2029 Century Park East, 35th Floor
Los Angeles, California 90067-3021
Telephone: (310) 277-7200
Facsimile: (310) 201-5219

6 LORIE E. ALMON (*admitted pro hac vice*)
lalmon@seyfarth.com

SEYFARTH SHAW LLP
620 Eighth Avenue, 32nd Floor
New York, New York 10018
Telephone: (212) 218-5500
Facsimile: (212) 218-5526

10 Attorneys for Defendant
11 THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA, INC.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

15 DOMINIQUE OSBORNE, on her own
behalf and on behalf of Aclass of
16 similarly situated persons pursuant to
F.R.C.P. 23 and 23 U.S.C. §216, and on
17 behalf of the General Public.

18 | Plaintiffs,

v.

20 THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA, A New
21 Jersey Corporation,

22 || Defendant.

Case No. CV10-2465 JFW (CWx)

The Hon. John F. Walter

**EXCERPTS FROM DEPOSITION
OF PLAINTIFF DOMINIQUE
OSBORNE CITED IN
DEFENDANT PRUDENTIAL
INSURANCE COMPANY OF
AMERICA, INC.'S
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT**

Date: December 6, 2010
Time: 1:30 p.m.
Courtroom: 16

Complaint Filed: April 5, 2010
Discovery Cutoff: March 1, 2011
Motion Cutoff: March 28, 2011
Pre-Trial Conf.: May 6, 2011
Trial Date: May 24, 2011

1 TO PLAINTIFF, DOMINIQUE OSBORNE, AND HER COUNSEL OF
2 RECORD, TEEPLE HALL, LLP:

3 PLEASE TAKE NOTICE that Defendant Prudential Insurance Company of
4 America, Inc. ("Defendant") hereby submits the following Excerpts From The
5 Deposition Of Plaintiff Dominique Osborne cited In Defendant's Memorandum Of
6 Points And Authorities In Support Of Its Motion For Summary Judgment.

7
8 DATED: November 8, 2010

SEYFARTH SHAW LLP

9 By: _____ /s/ Jon D. Meer
10 JON D. MEER

11 Attorneys for Defendant
12 THE PRUDENTIAL INSURANCE
13 COMPANY OF AMERICA, INC.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **EXCERPTS FROM DEPOSITION OF DOMINIQUE OSBORNE CITED IN**
2 **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**
3

4 1. Plaintiff's Depo., 11:20-12:8:

5 Q You started work on August 21st, 2008
6 and your employment ended on -- to July
7 17th, 2009, correct?

8 A I want to say it was before August 21st,
9 but it in August.

10 Q August 2008, right?

11 A Yes. That's correct.

12 Q And your employment ended on July 17th,
13 2009, right?

14 A I'm not sure of the exact date, but I
15 know it was in July.

16 Q And during the time that you were
17 working for Prudential, you worked at
18 their Agoura Hills location, correct?

19 A Yes. That's correct.

20 2. Plaintiff's Depo., 17:21-25:

21 Q At any time.

22 A Only really when I was hired there.

23 Q And you left 21st Century Insurance
24 Company voluntarily, correct?

25 A Yes.

26

27

28

1 3. Plaintiff's Depo., 23:9-14:

2 Q And the shift when you were working at
3 the company began at 8:00 a.m. and ended
4 at 4:00 p.m., correct?

5 MR. BLACK: Objection. Assumes facts not
6 in evidence.

7 THE WITNESS: Yes.

8 4. Plaintiff's Depo., 23:21-24:20:

9 Q Sure. The shift starting and stopping
10 time -- 8:00 a.m. to 4:00 p.m. -- that
11 was automatically recorded by the
12 company without you having to punch a
13 time clock or fill out a time card,
14 right?

15 A Yes. That's correct.

16 Q And the shift when you were working at
17 the company began at 8:00 a.m. and ended
18 at 4:00 p.m., correct?

19 MR. BLACK: Objection. Assumes facts not
20 in evidence.

21 THE WITNESS: Yes.

22 Q And as part of your regular shift from
23 8:00 a.m. to 4:00 p.m., you received a
24 30-minute lunch break, correct?

25 MR. BLACK: Objection. Vague and
26 ambiguous as to "received."

27 THE WITNESS: Yes. That's correct.

1 BY MR. MEER:

2 Q You took 30 minutes for lunch every day,
3 right?

4 MR. BLACK: Objection. Vague and
5 ambiguous. Overbroad. Vague as to time.

6 THE WITNESS: Yes. That's correct.

7 BY MR. MEER:

8 Q And so as part of your regular work
9 shift from 8:00 a.m. to 4:00 p.m., you
10 had 30 minutes of an unpaid lunch and
11 the remaining seven and a half hours
12 were paid, correct?

13 MR. BLACK: Objection. Vague and
14 ambiguous as to "paid." Overbroad.
15 Compound. Do you understand the
16 question?

17 THE WITNESS: Yes, yes. Yes, that's
18 correct.

19 5. Plaintiff's Depo., 25:3-26:2:

20 Q There were two ten-minute breaks that
21 you were allowed to take every day,
22 correct?

23 A Yes. That's correct.

24 Q And there was a third block of ten
25 minutes where you were allowed to do
26 whatever you wanted and not have to
27 perform work activities, correct?

28

1 MR. BLACK: Objection. Assumes facts not
2 in evidence. Vague and ambiguous.
3 Leading. Overbroad. Compound.

4 THE WITNESS: Yes, if you needed, for
5 example, to use the rest room.

6 BY MR. MEER:

7 Q And so you understood during the time
8 that you worked at Prudential you were
9 responsible for seven hours of
10 performing work each day, you had three
11 breaks totaling 30 minutes and one lunch
12 period totaling 30 minutes, correct?

13 MR. BLACK: Objection. Calls for a legal
14 conclusion. Misstates prior testimony.
15 Vague and ambiguous.

16 THE WITNESS: Well, really -- it wasn't
17 fully an hour unless you did have to use
18 the bathroom. So really, I guess with
19 the -- the ten minutes extra or what
20 have you -- I mean, it was just used if
21 you needed to use it, but not always
22 every single day.

23 6. Plaintiff's Depo., 26:16-21:

24 Q You were told that you would have two
25 ten-minute breaks during each workday,
26 correct?

27 A Yes. That's correct.

1 Q And you were always allowed to take two
2 ten-minute breaks each workday, right?
3 A Yes, I was.

4 7. Plaintiff's Depo., 34:14-22:

5 Q And at the call center where you worked,
6 there were approximately 14 hourly
7 employees?

8 MR. BLACK: Objection. Vague and
9 ambiguous. Vague as to "hourly
10 employees." Calls for a legal opinion.

11 THE WITNESS: Well, there was more than 14
12 employees that worked in the call
13 center. There was other people that did
14 different things that were not all --
15 not everyone was on the phone.

16 8. Plaintiff's Depo., 38:21-39:2:

17 Q But when you recorded the total amount
18 of time you worked on a particular day --
19 A Mm-hmm.

20 Q -- that was always accurate, correct?

21 MR. BLACK: Objection. Calls for a legal
22 conclusion. Vague and ambiguous.
23 THE WITNESS: I would say yes.

24 9. Plaintiff's Depo., 45:6-13:

25 Q You didn't want to work overtime as
26 well, correct?

27 A Yes. That's correct.
28

1 Q So if overtime had been offered to you
2 and it was voluntary, you would have
3 declined?

4 MR. BLACK: Objection. Calls for
5 speculation.

6 THE WITNESS: Yes. That's correct. I would
7 have declined.

8 10. Plaintiff's Depo., 48:3-23:

9 Q And some people were assigned to the
10 activity of handling claims, correct?

11 A Well, yes. There was people that -- that
12 strictly were just doing claims, but you
13 can also be on phone working because we
14 were always having to multi-task and
15 work on claims as well.

16 Q But there were some people who didn't
17 wear a headset during some part of the
18 day and they only worked on claims and
19 didn't take any calls, right?

20 MR. BLACK: Objection. Misstates prior
21 testimony. Vague and ambiguous and
22 misleading.

23 THE WITNESS: Yes. That's correct.

24 Q And there were some people who also
25 during some part of the day handled
26 administrative issues, paperwork,
27 correspondence, things like that?

28

1 MR. BLACK: Objection. Assumes facts not
2 in evidence.

3 THE WITNESS: Yes. That's correct.

4 BY MR. MEER:

5 Q And these activities -- just to use
6 shorthand so that we're both talking
7 about the same thing, I'm going to refer
8 to as "handling calls," and you
9 understand those are the people who are
10 wearing headsets and either talking to
11 callers that come in or waiting for
12 callers that come in. Is that a fair
13 description of it?

14 A Yes.

15 Q Okay. And people who are handling claims
16 are not wearing a headset, they are
17 handling the claims process and matching
18 up the claims with the proper payments
19 to be paid, correct?

20 MR. BLACK: Objection. Misstates prior
21 testimony. Vague and ambiguous and
22 misleading.

23 THE WITNESS: I would have to disagree
24 because if we got busy all of a sudden,
25 everybody who was doing claims -- you
26 could keep your headset on all day
27 because it was unpredictable because of
28 being a call center. So they could be

1 required to jump on the phones in the
2 middle of doing a claim. So everyone was
3 -- the job that was trained to do claims
4 was also trained to be on the phone at
5 any moment's notice.

6 11. Plaintiff's Depo., 50:19-51:5:

7 Q And those three activities were in a
8 constant state of change throughout the
9 day depending on call volume or claim
10 volume, correct?

11 A Yes. That's correct.

12 Q So if the call volume was particularly
13 high, then more people were handling
14 calls than if the call volume was
15 particularly low, right?

16 A Yes. That's right.

17 Q People moved from handling calls to
18 handling claims or to handling
19 correspondence throughout the same day,
20 right?

21 A Yes. That's right.

22 12. Plaintiff's Depo., 71:20-23:

23 Q ...[D]id you ever say to a supervisor or
24 manager, you know, "I stayed beyond my
25 shift ending time today, how should I
26 record or am I allowed to record the
27 extra time worked?"

28

1 A No. No, I didn't go ahead and push the
2 subject.

3 13. Plaintiff's Depo., 93:18-23:

4 Q Okay. If you were to look through them,
5 would you be able to spot specific days
6 that you think are not accurate?

7 A No. No. Realistically, I don't know who
8 could do that. I know I can't, so no. I
9 wouldn't be able to say which days are
10 not accurate.

11 14. Plaintiff's Depo., 95:10-12:

12 Q Did you ever keep any separate set of
13 records on your own showing the times
14 that you arrived at work?

15 A No, I didn't.

16 15. Plaintiff's Depo., 96:13-97:3:

17 Q On some days you got to the office at
18 only a couple of minutes before your
19 shift started, correct?

20 MR. BLACK: Objection. Assumes facts not
21 in evidence. Misstates prior testimony.
22 Lacks foundation.

23 THE WITNESS: Yes. That's correct.

24 BY MR. MEER:

25 Q And on some days you got to the office
26 after your shift started, correct?

27 MR. BLACK: Objection. Also vague and
28 ambiguous as to "office."

1 THE WITNESS: Yes. Yes. That could happen
2 as well.

3 BY MR. MEER:

4 Q And on some days, you got to the office
5 exactly at the time that your shift
6 started, correct?

7 A Yes. That's correct.

8 16. Plaintiff's Depo., 98:17-99:2:

9 Q Well, even though they may have
10 requested you to show up earlier, you
11 were never disciplined or demoted or had
12 your pay cut or in any way counseled
13 about the time that you arrived at the
14 office, right?

15 MR. BLACK: Objection. Asked and
16 answered. Misstates prior testimony.

17 THE WITNESS: No.

18 BY MR. MEER:

19 Q You never received any of that
20 discipline or counseling?

21 A No. No, I didn't.

22 17. Plaintiff's Depo., 111:19-112:1:

23 Q So is there any day specifically when
24 you can remember the time you stopped
25 working?

26 MR. BLACK: Again, objection. Vague and
27 ambiguous as to whether "specifically"

1 is being used or referring to a specific
2 day or a specific time on any day.

3 THE WITNESS: No. I cannot tell you for a
4 specific day, no.

5 18. Plaintiff's Depo., 146:21-147:8:

6 Q Sure. This is a daily production report
7 which is for your work beginning on
8 January 2nd, 2009.

9 A Mm-hmm.

10 Q And there are different types of
11 production --

12 A Yes.

13 Q -- different types of work done. There's
14 claims, there's telephone --

15 A Yes.

16 Q -- and then there's correspondence and
17 there's also nonproductive time,
18 vacations, PTO time, time spent in
19 meetings. And there is a sum of
20 production minutes for each of these
21 activities.

22 A Okay.

23 19. Plaintiff's Depo., 149:25-150:2:

24 Q Okay. These daily production reports
25 were your requirement to log all work-
26 related activities?

27 A Yes. That's correct.

28

1 20. Plaintiff's Depo., 150:19-25:

2 Q Okay. And so looking at all of these
3 dates, you filled in the amount of time
4 spent on each of these different work-
5 related activities per day, correct?

6 MR. BLACK: Objection. Document speaks
7 for itself. Lacks foundation as to what
8 the document even is.

9 THE WITNESS: Yes. That's correct.

10 21. Plaintiff's Depo., 151:22-152:7:

11 Q This is the most accurate record that
12 you're aware of showing the amount of
13 time you spent during the day on
14 different work activities, right?

15 MR. BLACK: Objection. Misstates prior
16 testimony. It's leading. It's
17 intentionally misleading. And it's
18 confusing and it assumes facts not in
19 evidence. Sorry.

20 THE WITNESS: I would say it would probably
21 be the closest thing to something being
22 accurate as regards to some type of
23 record kept for what we did for
24 production throughout the day.

25 22. Plaintiff's Depo., 154:7-155:5:

26 Q So if we were to find this handwritten
27 journal, the handwritten journal to your
28 memory would include the same amount of

1 minutes that you entered electronically,
2 correct?

3 A I would say yes. Sometimes I had
4 questions on them myself because you
5 could go a day or two, just get caught
6 up with doing -- doing your work and
7 stuff because this -- unfortunately with
8 doing these reports, it affected your
9 time to process -- process claims and
10 what have you and other things that we
11 were required to work on. But this is
12 the close -- the thing that comes the
13 closest to doing it and sometimes, you
14 know, you can do it every day or
15 sometimes some people would do them
16 weekly and just copy and enter it into
17 the system. Me personally, I try to do
18 it -- do it every -- every day or at
19 least every other day.

20 Q The Prudential policy was to do it every
21 day, correct?

22 A Yes. That's correct.

23 Q And there is no other set of records
24 that you're aware of that would have a
25 more accurate representation of the
26 amount of time you spent on these
27 various daily activities, right?

28 A No, not that I know of.

1 23. Plaintiff's Depo., 160:25-161:7:

2 Q And so this wasn't a system where
3 someone was just supposed to routinely
4 record seven hours a day, they were
5 supposed to record the actual amount of
6 time spent, right?

7 MR. BLACK: Objection. Vague and
8 ambiguous as to "time spent." Asked and
9 answered and misstates prior testimony.

10 THE WITNESS: Yes. That's correct.

11 24. Plaintiff's Depo., 165:15-18:

12 A Okay. Well, it wouldn't be every day,
13 but I mean that I stayed, I mean, 15, 20
14 minutes later. But, I mean, on average,
15 I left anywhere from 4:07 to 4:15 each
16 day.

17 25. Plaintiff's Depo., 166:19-167:6:

18 Q ...[H]ow much extra time did you work on
19 the worst day?

20 A On the worst day? I would say it could
21 be up to like 13, 15 minutes.

22 Q Okay. And if this was the worst case
23 scenario week -- let's say 15 minutes of
24 extra time worked each day without being
25 paid -- that would be 15 minutes times
26 five days a week, right?

27 A Yes.

28 Q You never had to work weekends, right?

1 A No, I didn't have to work weekends.

2 Q You were always on a five-day week?

3 A Yes. That's correct.

4 26. Plaintiff's Depo., 167:17-21:

5 Q It is a complex question, I guess. So
6 you were working the worst amount of
7 uncompensated time every day of the
8 workweek, that would be 15 minutes per
9 day or 1 hour and 15 minutes per week,
10 right?

11 A Yes, roughly about that.

12 27. Plaintiff's Depo., 168:11-13:

13 Q And so you automatically got paid for 37
14 1/2 hours per week, right?

15 A Yes

16 28. Plaintiff's Depo., 169:8-16:

17 Q Okay. So 37 1/2 -- we add the hour.

18 That's 38. And then we add the extra 15
19 minutes. That makes it 38 hours and 45
20 minutes.

21 A Yes.

22 Q So instead of being paid 37 1/2 hours
23 per week on the worst weeks when you
24 were working the most time without being
25 paid, you should have been paid 38 hours
26 and 45 minutes per week?

27 A Yes. That's correct.

28

1 29. Plaintiff's Depo., 192:23-193:3:

2 Q And the telephone queue -- how long did
3 it take to load into that assuming no
4 human error, that you remembered the
5 password, that you were able to type at
6 a regular speed, all of that?

7 A It probably took about 15, 20 seconds.
8 It didn't take that long.

9 30. Plaintiff's Depo., 193:11-19:

10 Q And the Pride system -- how long did
11 that take to logon to?

12 A That could take some time. It could take
13 five minutes, sometimes seven minutes.
14 It took a long time.

15 Q And what percentage of the time in the
16 morning did you have to logon to the
17 Pride system?

18 A I would say probably maybe a good 30, 40
19 percent.

20 31. Plaintiff's Depo., 194:16-24:

21 Q So on the dates when you had to begin
22 your shift on telephones, the majority
23 of the time it was Lotus Notes which
24 could take up to two minutes, the
25 telephone queue IP Agent which would
26 take 15 or 20 seconds, the ABC system
27 which could take a minute to a minute
28 and a half, and the CFE system which

1 could take two to three minutes; is that
2 right?

3 A Yes. That's right, yes, to get all of
4 these systems up, yes.

5 32. Plaintiff's Depo., 202:6-11:

6 Q And so in order to be considered logged
7 on by 8:00 a.m., you might still be
8 logging on to programs after 8:00 a.m.,
9 right?

10 MR. BLACK: Objection. Vague and
11 ambiguous as to what "logged on" means.

12 THE WITNESS: Yes. That's correct.

13 33. Plaintiff's Depo., 203:21-204:4:

14 Q But if somebody was following the policy
15 articulated at the call center where you
16 worked, they could have logged on to
17 just one of those systems by 8:00 a.m.
18 and then logon to the other systems
19 after 8:00 a.m., right?

20 MR. BLACK: Objection. The question is
21 vague and ambiguous. It's compound and
22 it's intentionally misleading.

23 THE WITNESS: Yes. That's true.

24 34. Plaintiff's Depo., 205:2-6:

25 Q Sure. If the telephone queue took 15 to
26 20 seconds to logon to, then if somebody
27 arrived 30 seconds before 8:00 a.m.,

1 they could be logged on to the telephone
2 queue at 8:00 a.m.?

3 A Yes.

4 35. Plaintiff's Depo., 205:13-15:

5 Q And you could login to those other
6 computer systems after 8:00 a.m., right?

7 A Yes. You could go ahead and do that.

8

9

10 36. Plaintiff's Depo., 206:11-25:

11 Q But if you could logout of the systems
12 in whatever sequence or order you wanted
13 to -- if you wanted to avoid calls that
14 went after 4:00, the first thing you
15 would logout of would be IP Agent
16 because once you're out of that you're
17 out of the call queue, right?

18 MR. BLACK: Objection. Assumes facts not
19 in evidence. Incomplete hypothetical.
20 Calls for speculation and is misleading.

21 THE WITNESS: You could basically -- you
22 wouldn't even necessarily have to
23 logout. You can stay into -- I forget
24 what it was called there. It might have
25 been like "not ready" or "wrap up" or
26 something like that to where you could
27 still be in the system but where you
28 block from not getting anymore phone

1 calls while you're wrapping up your
2 work.

3 37. Plaintiff's Depo., 210:22-211:2:

4 Q And on days when it didn't freeze and
5 things logged out correctly, it could be
6 done in less than two minutes?

7 MR. BLACK: Objection. Misstates prior
8 testimony.

9 THE WITNESS: I would say within three
10 minutes.

11 38. Plaintiff's Depo., 214:3-11:

12 Q On days where you were not on a call,
13 you could start logging out at 3:50
14 p.m., right?

15 A Yeah. I mean, we still -- we had to go
16 ahead and, you know, finish our work or,
17 you know, pretty much just get any
18 paperwork we had organized, put back in
19 our desk or what have you, start logging
20 out of your systems if we didn't have a
21 phone call or whatever. But Prudential
22 always made sure they could squeeze
23 every minute out of you.

24 39. Plaintiff's Depo., 224:22-225:1:

25 Q And just to get an accurate pay rate on
26 there, on page 2 of this, it indicates
27 that you had a pay rate of \$19.48. Is
28 that accurate?

1 A Yes. It looks like it's 48. It looks
2 like 49 on one of them, but it's a
3 penny.

4 40. Plaintiff's Depo., 228:9-16:

5 Q On the dates when you were three minutes
6 or five minutes or ten minutes late, you
7 never told any supervisor or manager to
8 adjust your time, right?

9 MR. BLACK: Objection. Intentionally
10 misleading. Lacks foundation. It's
11 argumentative. Assumes facts not in
12 evidence and is intended to intimidate
13 the witness.

14 THE WITNESS: No, I didn't ask anyone.

15 41. Plaintiff's Depo., 238:14-16:

16 Q And the Prudential electronic intranet
17 system also had a section on payroll and
18 overtime, correct?

19 A I'm sure it did. I didn't review it,
20 though.

21 42. Plaintiff's Depo., 240:1-3:

22 Q You are sure that there was a policy
23 regarding payroll and timekeeping,
24 right?

25 A Yes.

26 43. Plaintiff's Depo., 241:23-242:5:

27 Q But based on your understanding that
28 overtime was over 40 hours a week, there

were not weeks at Prudential when you worked over 40 hours, correct?

MR. BLACK: Objection. Calls for a legal and expert opinion. Assumes facts not in evidence. Misstates prior testimony.

THE WITNESS: No, I didn't work over 40 hours a week at Prudential.

44. Plaintiff's Depo., 249:16-250:2

Q But you understood at Prudential that if you had wanted to try to navigate to find out who the appropriate person is for payroll issues or human resources issues, there were resources to find those people, right?

MR. BLACK: Objection. Asked and answered.
It's argumentative. Federal law
controls.

THE WITNESS: It's just something to where I -- I didn't want to be, I guess, going behind someone's back or questioning somebody's authority, considering everything that we were going through on a day-to-day basis. So it was just something that I just -- I just left alone even though I saw that it wasn't right.

1 45. Plaintiff's Depo., 284:24-285:10:

2 Q Some call centers have an incentive
3 program where they pay an employee per
4 call. The employee gets a base wage and
5 then maybe a dollar or a couple of
6 dollars for each call that they
7 complete. There wasn't any program like
8 that in effect at Prudential to your
9 knowledge, right?

10 MR. BLACK: Objection. Vague and
11 ambiguous as to "incentive payments" as
12 characterized by counsel. Vague as to
13 time. Overbroad.

14 THE WITNESS: I don't know about anywhere
15 else. I just know here in the Agoura
16 Hills office that was not something
17 offered to us.

18
19
20
21
22
23
24
25
26
27
28